



Snake River Waterkeeper
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'Applying science and law to conserve, protect, and sustain waters of the Snake River Basin.'

May 8, 2022

Via FOIA Online

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: *Freedom of Information Act Request for Documents and Records Related to the City of Driggs, Idaho's Wastewater Treatment Plant*

Dear FOIA Officer(s):

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *as amended*, for certain records and documentation within the control of your agency related to Clean Water Act ("CWA"), 33 U.S.C. §§ 1251, et seq., for the wastewater treatment plant owned and/or operated by the City of Driggs in Driggs, Idaho ("the WWTP"). The WWTP is located at S 1250 W, Driggs, Idaho 83422 and holds NPDES Permit ID0020141. If you believe the name, address, and/or permit number or ID is incorrect, please reach out to SRW for clarification. The subject of this request concerns documentation for the Driggs Wastewater Treatment Plant and its associated National Pollutant Discharge Elimination System ("NPDES") permit(s) relating to EPA's 2018 enforcement action against the WWTP as well as any and all additional and/or subsequent CWA or NPDES reporting and/or effluent violations by the WWTP documented or known by EPA to have occurred in addition to or since the violations addressed in that action.

I am making this request on behalf of Snake River Waterkeeper ("SRW"), a 501(c)(3) non-profit organization and licensed member of the WATERKEEPER® Alliance founded in 2014. SRW is dedicated to conserving, protecting, and promoting sustainable use of the Snake River and its tributaries. To achieve its objectives, SRW engages in grassroots advocacy and applies law and science to enhance water quality and preserve fish and wildlife habitat. SRW submits the following FOIA request to inform the public and to advance its mission of to protect and promote sustainable use of Snake River Basin waterways, which are threatened by illegal pollution, unpermitted effluent discharges, and Clean Water Act violations by Idaho permittees.

SRW requests copies of the following records within the EPA's custody or control related to the WWTP received, issued, or created since May 9, 2016:

1. Any material submitted by the WWTP owner and/or operator related to its compliance with the CWA, including but not limited to: daily, monthly, and/or nonmonthly discharge monitoring reports, annual reports, status/progress reports, investigations and inspections, permit applications, and permit compliance reports and plans; and
2. Any material prepared by the EPA regarding the WWTP's compliance with the CWA, including but not limited to inspections and evaluations of facilities, formal or informal enforcement actions against the facilities, determinations for terminating and/or renewing NPDES permits for the WWTP, and analyses of the WWTP's compliance with past or existing NPDES permits as well as applications for renewal/new NPDES permits.

Scope

If EPA believes that the responsive records are readily available online, please list the record title in your response so that SRW can confirm that it does in fact have, or have access to, those documents. In the event that EPA denies access to any of the records, please note that FOIA provides that, if only portions of a file are exempt from release, the remainder of the file must still be released. SRW therefore requests that EPA provide all non-exempt portions of responsive records that are reasonably segregable from exempt portions. SRW further requests that the EPA describe any deleted material in detail and specify the basis and justification for that denial. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. EPA's written justification might also help to avoid unnecessary litigation. SRW reserves its right to appeal the withholding or deletion of any information and expects that EPA will list the office and address where such an appeal can be sent. Please advise our attorneys as soon as possible if you have any questions regarding the scope or nature of this FOIA request.

Timing

Under FOIA, the agency must make a determination on this request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 40 C.F.R. §2.104(a). A determination requires the agency to gather and review the documents, determine and communicate the scope of documents the agency intends to produce and withhold and the reason for withholding any documents, and inform SRW of its appeal rights.

Format

SRW is willing to accept any or all of the requested documents in electronic or printed format. You may provide information electronically to our attorneys at griefen@bnd-law.com, telegin@bnd-law.com, and buck@snakeriverwaterkeeper.org, or on CD, DVD, or USB flash drive

by mail to: Zachary Griefen, Bricklin & Newman, LLP, 123 NW 36th Street, Suite 205, Seattle, WA 98107.

Fees

Because SRW is a public interest non-profit organization, it hereby requests that the EPA waive any fees associated with this request pursuant to 40 C.F.R. § 2.170(l). FOIA requires the federal government to furnish records to public interest groups free of charge, or at a reduced rate, “if disclosure of the information is in the public interest,” in that it “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.170(l)(1). SRW is seeking this information to further its mission to protect and conserve the Snake River and all life connected to it, and to educate its members, other stakeholder organizations, and the general public on this WWTP’s compliance with the CWA and EPA-monitored NPDES permits. For the reasons explained below, SRW meets the criteria for a full fee waiver.

1. The subject of the request concerns the operations or activities of the government.

The FOIA request is has a direct and clear connection to operations and activities of the Federal Government. *See* 40 C.F.R. § 2.107(l)(2)(i). The request concerns the EPA’s management over Clean Water Act compliance for WWTPs in Idaho, including EPA’s past or current enforcement actions and violations of EPA-managed NPDES permits by this and other WWTPs.

2. The request seeks information that is valuable to the public.

The requested information will provide meaningful information such that it is likely to contribute to an understanding of government operations or activities. *See* 40 C.F.R. § 2.107(l)(2)(ii). The requested information concerns the federal government’s operation and implementation of the Clean Water Act. These records will provide recent information underlying, and afford insight into, EPA’s decision-making process, management of CWA violators, and effectiveness of EPA-crafted NPDES permits. This information will help SRW and the public understand and evaluate EPA’s efforts to enforce the CWA. To the best of SRW’s knowledge, the information sought through this request is not already in the public domain.

3. The release of requested records will contribute significantly to public understanding of the governmental activities.

Production of the records is likely to contribute significantly to public understanding of the operations or activities of the government. *See* 40 C.F.R. § 2.107(l)(2)(iii)-(iv). SRW has been studying WWTPs in Idaho to determine their effects on the fish and wildlife in the Snake River. SRW regularly disseminates information to its members, the public, government officials, legislatures, industry groups, and other nonprofits. SRW will use the requested information to understand the extent of CWA violations from WWTPs to the Snake River and its streams and

tributaries, and EPA's measures to enforce the CWA in a meaningful way. SRW will then use this understanding to further the public's understanding of these various issues through a variety of mediums, including public presentations, newsletters, e-blasts, social media alerts, and/or other means.

SRW has more than 600 members and thousands of people receive its communications, view its website, use its SWIM Guide app to stay informed of water quality warnings, and/or follow its social media accounts on Instagram and Facebook. SRW's mission is "Applying science and law to protect, restore, and sustain waters of the Snake River Basin." SRW is the only organization dedicated to ensuring water quality in the Snake River is swimmable, fishable, and drinkable. SRW routinely engages in reviewing public records related to water quality and habitat issues and thus has expertise in the relevant subject matter. Based in Boise, ID, SRW is a licensed chapter of the national Waterkeeper Alliance based in New York, NY—a fast-growing world-wide environmental movement focused on protecting clean water that has more than 350 chapters on 6 continents and hundreds of thousands of members cumulatively. Both SRW and Waterkeeper Alliance have routinely and successfully disseminated information to the public about government activities gleaned from FOIA requests, including information about the government's regulation of pollution in, and activities affecting, federal waterways.

After reviewing the records produced by EPA pursuant to this request, SRW intends to disseminate relevant information from this FOIA request to its members, supporters, staff at Waterkeeper Alliance, and the public at large through social media, email newsletters, press releases, its website, and/or other means. SRW maintains a website at www.snakeriverwaterkeeper.org/ to keep its members and interested parties informed by disseminating information free of charge to the public regarding its efforts. Through these means, SRW will use information obtained through this request to contribute to public understanding of water quality and other habitat issues relating to Idaho's Snake River Basin.

SRW's members and affiliates have expressed interest in threats to Snake River water quality, both for their own recreational interests and as important habitat to several salmonid species listed as threatened or endangered pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq. As such, SRW is confident that a reasonably broad audience of persons are interested in the subject matter of the request. The staff and board members of SRW have expertise in this subject area and the ability and intention to effectively convey the information requested to the public. This information is meaningfully informative because, as mentioned and to the best of SRW's knowledge, this information is not otherwise available to the public or in the public domain, and this information will therefore significantly contribute to the public's understanding of the subject matter of the request.

4. *Disclosure would not serve a commercial interest of the requestor.*

SRW has no intention to use this information for any manner that furthers a commercial, trade, or profit interest. See 40 C.F.R. § 2.107(l)(3). SRW is a certified 501(c)(3), tax-exempt non-profit organization in good standing that has no commercial interest in the

requested records. SRW intends to use the records disclosed by EPA pursuant to this request to further its mission of protecting the Snake River and its connected waterways. SRW is requesting records in EPA's possession to benefit the public—not personal or commercial interests. SRW and the public have a great interest in preserving the Snake River, the fish and wildlife that depend on the Snake River, and other surrounding natural resources and thus a great interest in determining the potential impacts of WWTP discharges into its waterways.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is “in the public interest.” The *per se* significance of the “citizen watchdog” function carried out by SRW is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as “citizen watchdog” organizations. See *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987). Disclosure is in no way connected with any commercial interest of the requestor, as SRW is a nonprofit, nonpartisan public interest organization. The materials discussed above that are produced by SRW, including publications, websites, comments, and newsletters, are freely available to the public at no cost. See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requestors” (quoting legislative history)).

Conclusion

For the reasons stated above, SRW requests that EPA provide the requested documents in complete form within the statutory deadlines and waive all fees associated with this request. For the reasons described above, SRW is entitled to a full fee waiver, and hereby requests that EPA provide a detailed justification in the event it denies all or any part of this request along with a cost estimate for the production of records withheld from EPA's response to this request.

Please contact me if you have any questions about this request, particularly concerning the identity of the records requested. Thank you in advance for your assistance in this matter.

Very truly yours,

SNAKE RIVER WATERKEEPER

F.S. “Buck” Ryan, III
Executive Director